

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-382-C - ORDER NO. 2000-0115
JANUARY 31, 2000

IN RE: Staff Petition for Rule to Show Cause as to) ORDER *VDJ*
Why the Certificate of Public Convenience) DENYING
and Necessity of America's Tele-Network,) MOTIONS
Corp., Should Not Be Revoked.)

This matter comes before the Public Service Commission of South Carolina (the Commission) on two Motions filed by America's Tele-Network, Corp. (ATN or the Company) in this Staff Petition for a Rule to Show Cause case against the Company. ATN filed a Motion to Object to the Jurisdiction of the Commission (the jurisdiction motion), and a Motion to Dismiss (the dismissal motion).

Oral arguments were heard on both Motions on January 11, 2000 at 2:30 PM in the Commission hearing room. The Honorable Philip T. Bradley, Chairman, presided. ATN was represented by Weston Adams, III, Esquire and Brian Cute, Esquire. The Commission Staff was represented by F. David Butler, General Counsel. Because of the reasoning below, we deny both Motions.

With regard to the jurisdiction motion, ATN argues that Staff's original Petition for a Rule to Show Cause alleges activities which fall under the exclusive jurisdiction of the Federal Communications Commission (FCC) and/or other Federal agencies. ATN alleges that although it is certificated to provide intrastate telecommunication services in South Carolina, the Company does not market its intrastate telecommunication services

to South Carolina customers, but only its interstate services. Second, the Company complains that the Staff failed to allege with specificity the factual basis necessary to establish Public Service Commission jurisdiction.

We reject both arguments. First, we would note that the controversy as outlined by the Staff Petition is over alleged violations of Section 2.13 of the Company's intrastate tariff. Clearly this Commission has specific jurisdiction over controversies concerning provisions of a Company's intrastate tariff on file with the Commission. Whether the Company is marketing interstate services is not relevant to our assumption of jurisdiction in this case, under these particular circumstances. Further, we would note that regardless of how ATN may be marketing its services, we take administrative notice of the fact that the Company appears to be completing intrastate long distance calls within South Carolina, and some intrastate calls were being completed by complainants in this matter. We believe that this gives us general jurisdiction over this Company's intrastate activities.

Section 152(b) of the Telecommunications Act of 1934 recognizes a State exception to the federal jurisdiction of the FCC for intrastate activities. Such an exception may apply even when there is a system with dual uses, such as appears here. The best example is shown in the 1986 United States Supreme Court case of Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986) wherein the Court held that Section 152(b) bars federal preemption of state regulation over depreciation of dual jurisdiction property for ratemaking purposes. Although the Telecommunications Act of 1996 eroded the State exception to some degree, the Court still spoke on the continuing vitality of

Section 152(b). The Court went on to say that where Congress has remained silent, 152(b) continues to function. The present case contains allegations of violations of a State-approved tariff provision, that is, the employment of deceptive or misleading telecommunications marketing practices to the detriment of consumers in South Carolina. This is a State matter of contract, as well as a regulatory matter for a long-distance reseller certified by the State of South Carolina. It appears to us that Congress has remained silent on trying to assert Federal jurisdiction in such matters.

We also believe that ATN willingly submitted to the jurisdiction of this Commission when it placed the tariff provision at issue in its tariff. We would note that the punishment for violation of the tariff provision, i.e. a rule to show cause as to why the Company's certificate should not be revoked appears in the tariff provision. Thus, we have jurisdiction to hear the Staff's Petition.

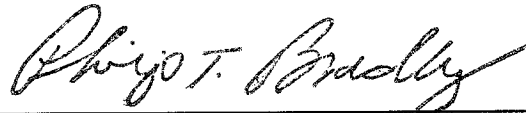
Next, with regard to the allegation that it was necessary for the Staff to assert a means of South Carolina Commission jurisdiction in the Petition itself, we reject that notion. Although this is required in the Federal venue, we do not believe that such is required by the South Carolina rules of procedure. We therefore reject and deny the jurisdictional motion.

With regard to the dismissal motion, we deny it. The gravamen of the motion is that the Commission Staff failed to allege with specificity the factual basis upon which it alleged violations of section 2.13 of ATN's intrastate tariff. The Staff argues, and we agree, that the Petition certainly states with specificity the grounds upon which the Staff's contentions are based. The Commission agrees that the Petition does not contain specific

times, places, dates, and consumers involved with the specific complaints upon which the Staff's Petition is based. Staff has offered to furnish this specific information to the Company via an amended Petition. We have no difficulty with this approach. Therefore, Staff shall amend its Petition, furnishing more specific information to the Company. ATN will then have fifteen (15) days from its receipt of the amended Petition to file its answer. A hearing will then be scheduled at an appropriate time.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)